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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,833	08/14/2001	Fumio Matsui	MATSUI 5	8102

7590 02/01/2006

BROWDY AND NEIMARK, P.L.L.C.
624 Ninth Street, N.W.
Washington, DC 20001-5303

EXAMINER

ANGEBRANDT, MARTIN J

ART UNIT	PAPER NUMBER
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1756

DATE MAILED: 02/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/928,833

Applicant(s)

MATSUI ET AL.

Examiner

Martin J. Angebrannt

Art Unit

1756

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 1/20/06 & 1/23/06 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires eight months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 23 January 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

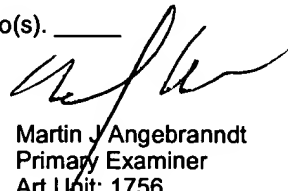
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1-5 and 7-14.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☒ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: See PTOL 892.


Martin J. Angebrannt
Primary Examiner
Art Unit: 1756

Continuation of 11. does NOT place the application in condition for allowance because: The status of the claims remains the same. The declaration is unpersuasive for the following reasons. First the declaration is merely an opinion, unsupported by evidence specific to the issues at hand. Secondly, Claims 1-5 and 7 are to the medium and merely express an INTENDED USE, due to the use of the "to which information is recorded" language. This does not require that the recording layer actually bear any information. The coverage would extend to the medium irrespective of what laser was used with it. The examiner cites Hamer "The cyanine dyes and related compounds" (1946) pp. 20, which shows a molecular absorption of a cyanine dye (trimethine). The applicant will note that the absorption extends (tails) from the absorption maxima on both sides of the maxima. Seeing as the reference is from 1964, the applicant certainly did not discover this physical phenomena of molecular absorption, which is clearly an inherent property of the material. The applicant seems to be unaware of this although it is also shown in figure 1 of the instant application. For the recording layer to function with a specific laser, it must absorb the laser wavelength, and the sensitivity is related to the amount of absorption, not which side of the absorption maximum of the dye, the recording laser wavelength the absorption takes place upon. The resolution of the spot, however is related to the wavelength and the minimum spot size (diffraction limited) is proportional to (λ/NA) . Therefore there is a benefit to using shorter wavelength lasers as the image/data spot written by these is smaller than those of longer wavelengths and therefore more data can be written per unit of surface area which provides motivation to do so. The applicant has not demonstrated any benefit beyond that attributable solely to the wavelength of the laser used. The position of the dye absorption maxima is irrelevant. The applicant should not that this is the limit of the focussing and that without specifying the exact exposure conditions (including NA) or the spot size written, even if the claims required data written upon the recording layer, data written at one wavelength is indistinguishable from data written using another. Thirdly, the applicant fails to appreciate that the dyes of the prior art are almost identical to those used in the illustrative examples and entirely fails to address this. Fourth, the claims do not set any limits on laser power or the like, so even a laser wavelength which is poorly absorbed by the recited dye can be written upon using a high power laser (He-Cd) or with the assistance of another dye (as in Namba et al. '231). The examiner also notes that light resistance impurities used by the applicant absorb at about 440 nm (see Ootagura et al.) and so may provide this assistance. The Namba et al. JP 60-204396 specifically describes the use of laser wavelengths up to 40 nm shorter than the absorption profile and clearly describes a variety of trimethine cyanine dyes. The applicant argues that the medium is of a gigabyte capacity, but the claims do not require this or even recite a groove pitch which would allow these capacities to be achieved with proper tracking. The claims are certainly not limited to these high densities or these limitations would appear in the claims. The applicant argues that a JP 60-204296 is silent with respect to blue or violet lasers, but fails to appreciate the emission wavelength of the HeCd disclosed on page 28 of Namba et al. JP 60-204396, (442 nm), see Namba et al. '231 in figure 7) and so this position is without merit. The evidence submitted with the declaration are of marginal value focussing only on various types of media and perhaps commercially available media. Clearly, the use of longer methine chain cyanine dyes absorb at longer wavelengths (See Hamer of record) and CD players use these for recording. The rejections based in part upon Namba et al. '231 have additional dyes which contribute to the absorption and the claims do not preclude the presence of these and the Namba et al. '231 reference clearly describes the use of lasers between 400 and 800 nm with a single recording layer. The examiner reiterates the position that the recording capacity, spot size, and/or exposure conditions are not described beyond the wavelength used and so the claims are not limited to the gigabyte storage capacity argued.

